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CIVIL PROCEDURE II

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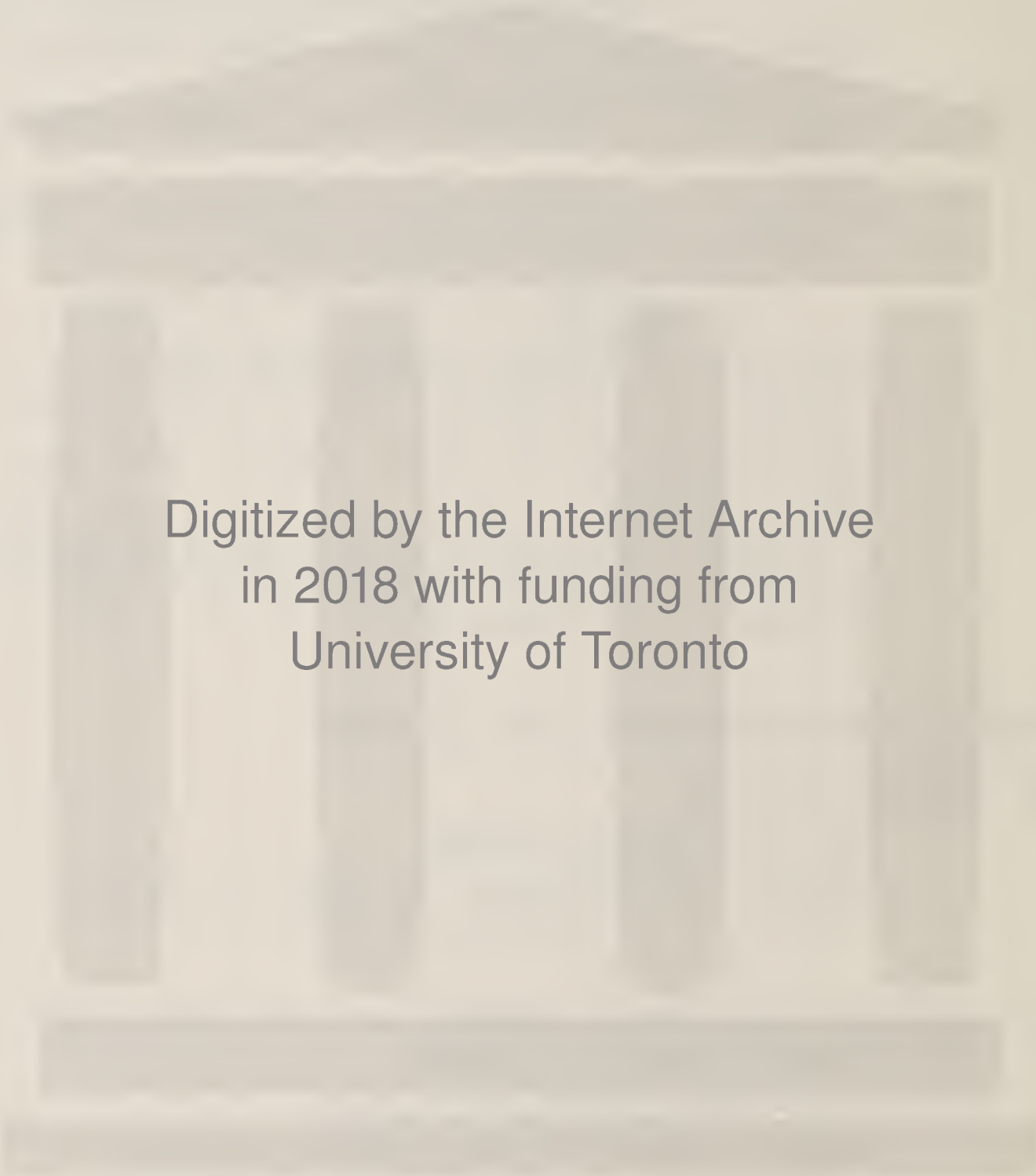
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CIVIL PROCEDURE II

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CIVIL PROCEDURE II

PART I - THE TRIBUNAL

(A) Judge or Jury

(i) Overview of a Trial

The overview of the trial is described herein primarily from the viewpoint of a jury trial. References will also be made to the procedure in a non-jury trial which is less formal and not as well-defined. The first step is to choose those persons who will serve as jurors for the particular case. The mechanics of bringing a jury panel into the courtroom and the actual selection of the jurors by counsel will be discussed in detail subsequently. For the purposes of our present discussion, let us assume that the jury has been selected and counsel are ready to commence the case. (One should bear in mind that in a civil action there are six jurors while in a criminal trial there are twelve jurors.)

In any trial there is, of course, an issue between the opposing parties. In order that the plaintiff might succeed in the action, there will be certain matters which he must prove. In this regard, one often hears the expression "burden of proof". At this time, we do not propose to discuss in detail the meaning of this term. This will be done subsequently. However, in order to understand the manner in which a trial proceeds one must keep in mind that if the plaintiff is unable to present adequate evidence to establish a *prima facie* case, i.e., sufficient evidence which if believed will establish his case and require the defendant to answer it, on a proper motion by the defendant at the end of the plaintiff's case the defendant might succeed in having the case dismissed. It might thus be said that the plaintiff has not fulfilled the burden of proving his case.

Before the case for the plaintiff has been opened, there are usually certain matters that counsel might wish the trial judge to deal with. For example, as a result of pre-trial agreement between counsel, certain facts will be admitted, thereby saving a substantial amount of time at trial in calling evidence to prove them. Thus, in a typical motor vehicle negligence case, counsel might inform the judge that they have agreed upon the fact that the motor vehicle in question was owned by the defendant A and driven by the defendant B, that the special damages occasioned by the plaintiff are not in dispute and are contained in a list which will be filed with the court, and that there are certain pieces of correspondence that can be admitted into evidence and marked as exhibits without further proof. Occasionally, counsel will have served notice of motion upon his opponent that at the opening of trial, certain relief will be asked for from the trial judge. A common example of such a motion is a motion to amend pleadings.

